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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CHAD ISAAC HUBER, Defendant and Appellant.	E048050 (Super.Ct.No. FWV803032) OPINION

APPEAL from the Superior Court of San Bernardino County. Mary E. Fuller, Judge. Affirmed.

Rex Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorneys General, and Stephanie Chow and Marcella O. McLaughlin, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found appellant and defendant Chad Isaac Huber guilty of unlawful driving of a vehicle (Veh. Code, § 10851, subd. (a), count 1), receiving stolen property (Pen.

Code,[1] § 496d, subd. (a), count 2), and evading an officer (Veh. Code, § 2800.2, subd. (a), count 3). The jury also found true the allegations that defendant had two prior strike convictions (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)). The trial court sentenced him to a total indeterminate term of 25 years to life in state prison.

On appeal, defendant contends that the trial court improperly instructed the jury on receiving stolen property. We affirm.

FACTUAL BACKGROUND

On November 13, 2008, Officer Brad Bonnet of the San Bernardino County Sheriff's Department was on patrol in an unmarked police car when he noticed a black Camaro (the car) stopped at an intersection. Officer Bonnet noticed the driver was smoking a cigarette. The driver removed the cigarette from his mouth and tossed it out the window. The driver was later identified as defendant. Officer Bonnet decided to conduct a traffic stop for the violation of throwing an incendiary device from the window. He ran a systems check on the vehicle license first and discovered the car had been reported stolen.

The owner of the car, Donna Marsh, had parked the car on November 11, 2008, in the parking lot of her residence. When she woke up the next morning, the car was missing. She immediately called the police to report it stolen. Marsh did not know defendant and had not given him permission to take or drive her car.

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[1] All further statutory references will be to the Penal Code unless otherwise noted.

Officer Bonnet notified dispatch that he was behind the car, and he requested a marked unit to conduct the traffic stop. Another officer arrived and tried to conduct a stop of the car, but defendant did not submit and a chase ensued. Defendant reached speeds up to 100 miles per hour. Officer Bonnet followed defendant in his unmarked car, along with the other officer in the marked car. The chase eventually ended when the car crashed into a house. Defendant exited the car and ran off on foot. Officer Bonnet exited his car and started chasing after defendant, who jumped over walls and ran through backyards. At one point, Officer Bonnet was approached by a woman who looked frightened. She pulled the officer into her backyard and pointed to a side door leading into her garage. They entered the house, and Officer Bonnet heard someone running upstairs. At some point more officers arrived with a police dog. The officers found defendant upstairs inside a closet.

ANALYSIS

The Court Properly Instructed the Jury on the Elements of Receiving Stolen Property

Defendant contends his count 2 conviction of receiving stolen property must be reversed, because the trial court 1) failed to instruct the jury on the elements of theft, and 2) broadened the definition of "receiving" to include property obtained by burglary. Neither claim has merit.

A. *The Jury Was Properly Instructed*

The trial court instructed the jury with a modified version of CALCRIM No. 1750, which provided in relevant part: "The defendant is charged in Count 2 with Receiving

Stolen Property in violation of Penal Code Section 496, subsection A. To prove that the defendant is guilty of this crime, the People must prove that:

"One, the defendant bought, received or withheld from its owner property that had been stolen;

"And two, when the defendant bought, received or withheld the property he knew that the property had been stolen;

"And three, the defendant actually knew of the presence of the property.

"Property is stolen if it was obtained by any type of theft or by burglary or robbery. To receive property means to take possession and control of it. Mere presence near or access to the property is not enough."

Defendant now claims that "[w]here a defendant is accused of receiving stolen property, the court must instruct the jury on the legal definition of 'stolen' or 'theft.'" Defendant primarily relies on *People v. MacArthur* (2006) 142 Cal.App.4th 275 (*MacArthur*) to support his contention. *MacArthur,* however, is factually distinguishable. In *MacArthur,* the defendant pawned jewelry given to him by his girlfriend. She often had given him jewelry belonging to her mother to pawn and had specified that the items should be pawned for a low amount so they would be easy to redeem. (*Id.* at pp. 277-278.) The appellate court noted that "pawning property does not transfer ownership or necessarily deprive the owner of possession permanently." (*Id.* at p. 281, fn. omitted.) Under these particular circumstances, the appellate court held that a jury should be instructed on the definition of the terms "stolen" and "obtained by theft." (*Id.* at pp. 280.) The appellate court noted the trial court had "failed to instruct the jury that theft requires

a particular intent, leaving the jury with no basis for determining whether the jewelry had been stolen—an issue raised by the evidence." (*Ibid*.)

In the instant case, the evidence showed without contradiction that the car had been stolen, and no factual issue remained for the jury to resolve. Marsh never gave anyone permission to borrow the car, and she reported the theft to law enforcement. Unlike *MacArthur*, there was no issue raised by the evidence on whether the car had been stolen. Accordingly, at trial, defendant never disputed the fact that the car was stolen. His sole defense was that he was not the driver of the car. Thus, the evidence did not present a factual scenario giving rise to a sua sponte duty to define "stolen" or "theft."

In his reply brief, defendant argues that his plea of not guilty placed every element of the charged offense at issue. Thus, he claims that, regardless of whether he tried to disprove the People's case, "the question of [his] intent was at issue and he was entitled to an instruction on whether the car was taken with the requisite intent and whether he knew this." However, in count 2, defendant was charged with receiving stolen property. Therefore, the prosecution was not required to show whether defendant took the car with the requisite intent under this count. Moreover, we note that in count 1, defendant was charged with the crime of unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a), and the prosecution opted to proceed only on the unlawful driving, not the taking. Accordingly, the People had to prove that defendant *drove* someone else's car without the owner's consent; and, when he did so, he intended to deprive the owner of ownership of the car. Again, the evidence did not raise any factual issue requiring a sua sponte *MacArthur* instruction. (*MacArthur, supra,* 142 Cal.App.4th at pp. 280-281.)

Furthermore, any error in the trial court's failure to give such an instruction was harmless beyond a reasonable doubt. (*See People v. Strong* (1994) 30 Cal.App.4th 366, 376.) No reasonable juror could have found the car was not stolen. Thus, even if the jury had been instructed as defendant now argues, it would have entered the same verdict.

B. *Any Error in Including "Burglary" in the Instruction Was Harmless*

Defendant also claims the court erroneously instructed the jury that property was stolen if it was obtained by burglary, and thereby broadened the offense of receiving stolen property beyond section 496d and lowered the burden of proof. We conclude that any error was harmless.

As noted, the court instructed the jury that "[p]roperty is stolen if it was obtained by any type of theft or by burglary or robbery." Burglary "requires an entry into a specified structure with the intent to commit theft or any felony. [Citations.]" (*People v. Tafoya* (2007) 42 Cal.4th 147, 170-171.) Here, Marsh testified the car had been taken overnight from a parking lot. The prosecutor did not theorize that the car was locked or had been burglarized in order to steal it. The prosecutor simply stated in his closing argument that the car "ha[d] been stolen as Ms. Marsh told you." We note the court had a duty to refrain from instructing the jury on principles of law that were irrelevant to the issues raised by the evidence. (E.g., *People v. Strunk* (1995) 31 Cal.App.4th 265, 271.) However, the extraneous instruction could not have been prejudicial. There was no basis for the jurors to be confused as to whether the car had been obtained by burglary. We have already explained that the evidence raised no issue as to whether the car was stolen

by theft. On this record, the outcome could not have been any different had the word "burglary" been omitted from the instruction.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P.J.

KING
J.